

IN THE SUPREME COURT OF FLORIDA

JAMIE LEE TASKER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC09-1281

JURISDICTIONAL BRIEF OF RESPONDENT

BILL McCOLLUM
ATTORNEY GENERAL

TRISHA MEGGS PATE
TALLAHASSEE BUREAU CHIEF,
CRIMINAL APPEALS
FLORIDA BAR NO. 0045489

HEATHER FLANAGAN ROSS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 036428

OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300
(850) 992-6674 (FAX)

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

	PAGE#
TABLE OF CONTENTS	ii
TABLE OF CITATIONS	iii-iv
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3-5
ISSUE I: IS THERE EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISION BELOW AND <u>STUBBS V. STATE</u> , 951 So.2d 910 (Fla. 2d DCA 2007), <u>SPELL V. STATE</u> , 731 So.2d 9 (Fla. 2d DCA 1999), and <u>BOGAN V.</u> <u>STATE</u> , 725 So.2d 1216 (Fla. 2d DCA 1999)? (Restated)	
.....	3-5
CONCLUSION	5
CERTIFICATE OF SERVICE	6
CERTIFICATE OF COMPLIANCE	6
APPENDIX	

TABLE OF CITATIONS

CASES	PAGE#
<u>Ansin v. Thurston</u>	
101 So. 2d 808 (Fla. 1958)	4
<u>Bogan v. State</u>	
725 So.2d 1216 (Fla. 2d DCA 1999)	2, 3
<u>Bowman v. State</u>	
974 So.2d 1205 (Fla. 1st DCA 2008)	3
<u>Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc.</u>	
498 So.2d 888 (Fla. 1986)	4
<u>Fitzhugh v. State</u>	
698 So.2d 571 (Fla. 1st DCA 1997)	3
<u>Jenkins v. State</u>	
385 So.2d 1356 (Fla. 1980)	4
<u>Reaves v. State</u>	
485 So.2d 829 (Fla. 1986)	4
<u>Spell v. State</u>	
731 So.2d 9 (Fla. 2d DCA 1999)	2, 3
<u>Stallworth v. Moore</u>	
827 So.2d 974 (Fla. 2002)	4
<u>Stubbs v. State</u>	
951 So.2d 910 (Fla. 2d DCA 2007)	2, 3

Tasker v. State

34 Fla. L. Weekly D1284 (Fla. 1st DCA, June 24, 2009) 1, 3

Statutes

Article V, § 3(b)(3), Fla. Const 3

Rules

Fla. R. App. P. 9.030(a)(2)(A)(iv) 3, 4

Fla.R.App.P. 9.210(c) 6

PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, JAMIE LEE TASKER, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal, attached in slip opinion form (hereinafter referenced as "slip op." at [page number]"). It also can be found at 34 Fla. L. Weekly D1284.

SUMMARY OF ARGUMENT

Petitioner asserts that the lower court has certified direct conflict of decision between its opinion entered below and that of the Second District Court of Appeal in Stubbs v. State, 951 So.2d 910 (Fla. 2d DCA 2007), Spell v. State, 731 So.2d 9 (Fla. 2d DCA 1999), and Bogan v. State, 725 So.2d 1216 (Fla. 2d DCA 1999). The "four corners" of the DCAs' decisions, reveal express and direct conflict with each other on the same point of law. Therefore, there is express and direct conflict, and this Court could exercise jurisdiction.

ARGUMENT

IS THERE EXPRESS AND DIRECT CONFLICT
BETWEEN THE DECISION BELOW AND STUBBS V.
STATE, 951 So.2d 910 (Fla. 2d DCA 2007),
SPELL V. STATE, 731 So.2d 9 (Fla. 2d DCA
1999), and BOGAN V. STATE, 725 So.2d
1216 (Fla. 2d DCA 1999)? (Restated)

The First District Court of Appeal issued an affirmance with opinion in Tasker v. State, 34 Fla. L. Weekly D1284 (Fla. 1st DCA, June 24, 2009), holding that Appellant failed to "preserve the issue of the assessment of victim injury points" because Appellant failed to challenge the assessment was not raised at the initial sentencing. The First District Court relied on Fitzhugh v. State, 698 So.2d 571 (Fla. 1st DCA 1997), Bowman v. State, 974 So.2d 1205 (Fla. 1st DCA 2008), and Section 924.06(2), Florida Statutes (2007). The First District certified conflict with Stubbs v. State, 951 So.2d 910 (Fla. 2d DCA 2007)(holding that trial court erred in refusing to allow defendant to challenge the inclusion of victim injury and legal constraint points at sentencing following revocation of probation), Spell v. State, 731 So.2d 9 (Fla. 2d DCA 1999)(holding defendant could challenge victim injury points after revocation of community control), and Bogan v. State, 725 So.2d 1216 (Fla. 2d DCA 1999)(holding that defendant could challenge assessment of victim injury points in appeal of revocation of probation despite the fact that defendant did not raise the issue at the original sentencing hearing or in a prior appeal).

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla.

Const. The constitution provides: The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986)(rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. Reaves, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a dissenting or concurring opinion"). Thus, conflict cannot be based upon "unelaborated per curiam denials of relief," Stallworth v. Moore, 827 So.2d 974 (Fla. 2002). In addition, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Jenkins, 385 So. 2d at 1359.

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained: It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the

judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

The State agrees that there is a conflict as related to the very narrow issue of whether an Appellant can challenge the assessment of victim injury points scored by the trial court on an original sentencing scoresheet **pursuant a negotiated plea agreement** on a direct appeal of a subsequent violation of probation or community control.

Therefore, express and direct conflict exists, and this Court could exercise its jurisdiction.

CONCLUSION

Based on the foregoing reason, there is conflict among the First and Second District Court of Appeals.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Glen P. Gifford, Assistant Public Defender, Counsel for Petitioner, Leon County Courthouse, Suite 401; 301 South Monroe Street; Tallahassee, Florida 32301, by MAIL on 17th day of August, 2009.

Respectfully submitted,
BILL McCOLLUM
ATTORNEY GENERAL

TRISHA MEGGS PATE
Tallahassee Bureau Chief,
Criminal Appeals
Florida Bar No. 0045489

By: HEATHER FLANAGAN ROSS
Florida Bar No. 036428
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Fl 32399-1050
(850) 414-3300 (VOICE)
(850) 992-6674 (FAX)
AGO: L09-1-19802

Attorney for the State of Florida

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

Heather Flanagan Ross
Attorney for State of Florida

IN THE SUPREME COURT OF FLORIDA

JAMIE LEE TASKER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC09-1281

INDEX TO APPENDIX

- A. Tasker v. State, 34 Fla. L. Weekly D1284 (Fla. 1st DCA, June 24, 2009)
- B. Stubbs v. State, 951 So.2d 910 (Fla. 2d DCA 2007)
- C. Spell v. State, 731 So.2d 9 (Fla. 2d DCA 1999)
- D. Bogan v. State, 725 So.2d 1216 (Fla. 2d DCA 1999)